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10/594,329

07/12/2007

Shimon Shacham

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EXAMINER

JACOBSON, MICHELE LYNN

ART UNIT

PAPER NUMBER

1794

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
|------------------------------|--------------------------------------|---------------------------------------|--|
| Office Action Summary | Application No. 10/594,329 | Applicant(s) SHACHAM ET AL. | |
| | Examiner MICHELE JACOBSON | Art Unit 1794 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 September 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>9/27/06</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Priority

1. It is noted that this application appears to claim subject matter disclosed in prior Application No. 60/558100, filed 4/1/04. A reference to the prior application must be inserted as the first sentence(s) of the specification of this application or in an application data sheet (37 CFR 1.76), if applicant intends to rely on the filing date of the prior application under 35 U.S.C. 119(e), 120, 121, or 365(c). See 37 CFR 1.78(a). For benefit claims under 35 U.S.C. 120, 121, or 365(c), the reference must include the relationship (i.e., continuation, divisional, or continuation-in-part) of all nonprovisional applications. If the application is a utility or plant application filed under 35 U.S.C. 111(a) on or after November 29, 2000, the specific reference to the prior application must be submitted during the pendency of the application and within the later of four months from the actual filing date of the application or sixteen months from the filing date of the prior application. If the application is a utility or plant application which entered the national stage from an international application filed on or after November 29, 2000, after compliance with 35 U.S.C. 371, the specific reference must be submitted during the pendency of the application and within the later of four months from the date on which the national stage commenced under 35 U.S.C. 371(b) or (f) or sixteen months from the filing date of the prior application. See 37 CFR 1.78(a)(2)(ii) and (a)(5)(ii). This time period is not extendable and a failure to submit the reference required by 35 U.S.C. 119(e) and/or 120, where applicable, within this time period is

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considered a waiver of any benefit of such prior application(s) under 35 U.S.C. 119(e), 120, 121 and 365(c). A benefit claim filed after the required time period may be accepted if it is accompanied by a grantable petition to accept an unintentionally delayed benefit claim under 35 U.S.C. 119(e), 120, 121 and 365(c). The petition must be accompanied by (1) the reference required by 35 U.S.C. 120 or 119(e) and 37 CFR 1.78(a)(2) or (a)(5) to the prior application (unless previously submitted), (2) a surcharge under 37 CFR 1.17(t), and (3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2) or (a)(5) and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional. The petition should be addressed to: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450.

If the reference to the prior application was previously submitted within the time period set forth in 37 CFR 1.78(a), but not in the first sentence(s) of the specification or an application data sheet (ADS) as required by 37 CFR 1.78(a) (e.g., if the reference was submitted in an oath or declaration or the application transmittal letter), and the information concerning the benefit claim was recognized by the Office as shown by its inclusion on the first filing receipt, the petition under 37 CFR 1.78(a) and the surcharge under 37 CFR 1.17(t) are not required. Applicant is still required to submit the reference in compliance with 37 CFR 1.78(a) by filing an amendment to the first sentence(s) of the specification or an ADS. See MPEP § 201.11.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 3-6, 12-17, 19-23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

4. Claims 3-6, 12, 13, 15 and 16 are indefinite from the recitation of "at least some of the conductive dissipative fibers". It is unclear from this recitation or applicant's specification how many fibers must necessarily display the features claimed in order to be considered "at least some". Therefore, one of ordinary skill in the art would not be reasonably apprised of the full breadth and scope of these claims. For the purpose of examination, two or more fibers will be reasonably broadly interpreted to read on the limitation "at least some". The examiner suggests removing this phrase and instead reciting in claim 3, for example, "the flexible intermediate bulk container of claim 1 comprising conductive dissipative fibers having a rectangular cross-section". Claims 14 and 17 are rejected as being dependent from indefinite claims 13 and 16. Appropriate correction is required.

5. Claims 3 and 4 are indefinite for the recitation of "substantially". It is unclear from this recitation or applicant's specification what shapes for the cross-section of the fibers claimed are to be considered to meet the limitation of "substantially rectangular" or "substantially round". Therefore, one of ordinary skill in the art would not be reasonably

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apprised of the full breadth and scope of these claims. Appropriate clarification is required.

6. Claim 15 recites the limitation "the at least some conductive dissipative fibers". There is insufficient antecedent basis for this limitation in the claim. Claim 1, from which claim 15 depends, recites a "plurality of conductive dissipative fibers" but does not recite "at least some". For the purpose of examination, claim 15 will be treated as if proper antecedent basis were present and will be interpreted to include the limitation of a FIBC comprising conductive dissipative fibers aligned with the warp. Claim 16 also lacks proper antecedent basis for the same reasons as claim 15. Claim 17 is rejected as being dependent from indefinite claim 16. Appropriate correction is required.

7. Claim 19 is indefinite for the limitation "wherein the lifting straps are conductively attached to the bag". It is unclear from this limitation or applicant's specification what the term "conductively attached" means since, according to the Merriam Webster dictionary, "conductively" is not a word. The examiner believes applicant intended to recite the attachment between the bag and the straps is conductive and claim 19 will therefore be interpreted as such. Claims 20 and 21 are rejected as being dependent from indefinite claim 19. Appropriate correction is required.

8. Claim 23 rejected under 35 U.S.C. 112, second paragraph, as being indefinite in that it fails to point out what is included or excluded by the claim language. This claim is an omnibus type claim and will not be further treated on the merits.

Claim Objections

9. Claims 1, 2, 8, 10 and 21 objected to because of the following informalities: Each of these claims recites the term "Polyolefine". This is an incorrect spelling of "polyolefin". Additionally, it is unnecessary to capitalize the first letter of "polyolefin", "polyether", "block" or "copolymer". Appropriate correction is required.

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

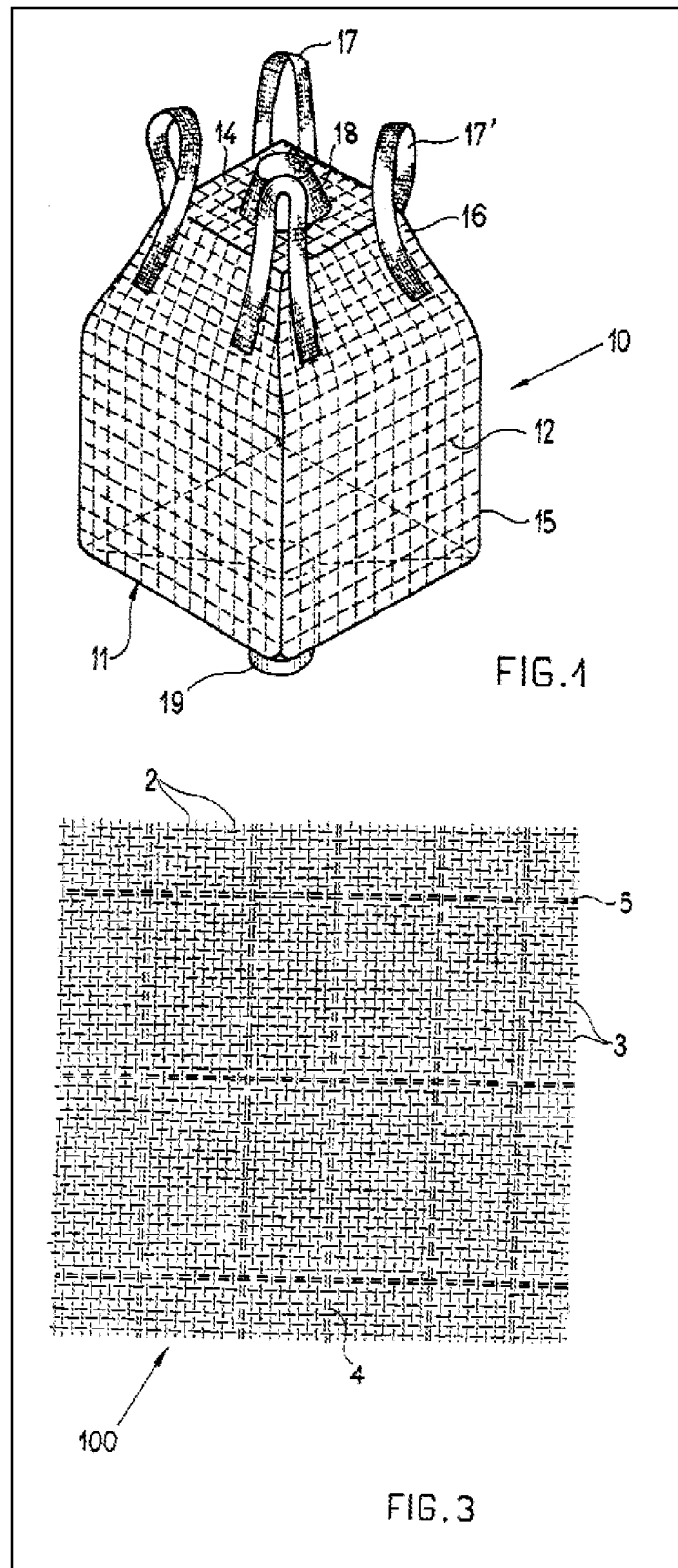
(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 1-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wurr et al. U.S. Patent No. 6,572,942 (hereafter referred to as Wurr) and Higuchi et al. PCT Publication No. WO 00/47652, U.S. Patent No. 6,552,131 used herein for reference (hereafter referred to as Higuchi).

12. Wurr teaches utilizing a static dissipative fabric to produce a flexible intermediate bulk container (FIBC) comprising electrically nonconducting and antistatic threads made of a thermoplastic synthetic with a special permanent antistatic additive mixed in that reduces the electrostatic resistivity of the container. (Col. 3, lines 27-35) These antistatic threads are disclosed to have rectangular or round cross sections. (Col. 3, lines 35-38) For the purposes of Wurr's invention, "antistatic" refers to a fabric whose

static discharge resistance of the surface is greater than $10^8 \Omega$ and less than $10^{11} \Omega$. (Col. 3, lines 39-42) The antistatic threads may comprise multifilament or monofilament threads. (Col. 3, lines 45-47)

13. To avoid the creation of small areas of electrostatically insulating fabric amidst the grid of electrically conducting threads, the distance of one thread to the next is not less than 1 cm and not greater than 5 cm, preferably a distance of 3 cm. (Col. 4, lines 6-10) Additionally, it is disclosed that it is advantageous to include a permanent antistatic coating to the fabric made of a thermoplastic synthetic with an additive mixed in that increases conductivity. Such a coating results in a large-area distribution of the charge across the fabric surface. (Col. 4, lines 11-19) From such a fabric a flexible bag



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comprising carrying straps with conducting material integrated is produced as shown in Fig. 1. (Col. 5, lines 11-12, Fig. 1)

14. As shown in Fig. 3, both warp (4) and weft (5) threads can comprise synthetic antistatic threads. (Col. 5, lines 43-45) Polypropylene, a polyolefin, is recited to be useful for production of the antistatic threads. (Col. 5, lines 48-50)

15. Wurr is silent regarding employing a polyether-block-polyolefin copolymer (PBPC) as the material for the antistatic threads recited.

16. Higuchi teaches a block copolymer comprising a polyolefin and a hydrophilic polymer that can be finely dispersed in resins such as polyolefins without requiring any compatibilizer to produce a thermoplastic resin composition having a permanent antistatic property when molded. (Col. 1, lines 46-58) Example 6 recites a block copolymer formed from polypropylene (a polyolefin) and polyethylene glycol (a polyether). (Col. 36, lines 63-65) The resin composition disclosed by Higuchi is recited to be useful for molding techniques such as extrusion molding and has excellent mechanical strength. (Col. 35, lines 20-30) Polypropylene is recited to be useful as a thermoplastic resin for dispersal of the PBPC antistatic agent. (Col. 30, lines 49-50) The PBPC antistatic agent is generally included in an amount of from 0.5% to 40% by total weight of the composition.

17. Both Wurr and Higuchi are directed towards articles formed from thermoplastic compositions having permanent antistatic properties. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have substituted the PBPC antistatic agent in polypropylene thermoplastic material disclosed

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by Higuchi for the antistatic comprising polypropylene to produce antistatic fibers as disclosed by Wurr since the polypropylene material of Higuchi was known to function in the same manner as the polypropylene material disclosed by Wurr for use as antistatic thread. This obvious selection of a known material based on its suitability for its intended use would have yielded the predictable result of producing a bag with antistatic threads having permanent antistatic properties. "In *United States v. Adams*, . . . [t]he Court recognized that when a patent claims a structure already known in the prior art that is altered by the mere substitution of one element for another known in the field, the combination must do more than yield a predictable result." *KSR*, 550 U.S.at ___, 82 USPQ2d at 1395. The selection of a known material based on its suitability for its intended use supports a *prima facie* obviousness determination. ("Reading a list and selecting a known compound to meet known requirements is no more ingenious than selecting the last piece to put in the last opening in a jig-saw puzzle." *Sinclair & Carroll Co. v. Interchemical Corp.*, 325 U.S. 327, 65 USPQ 297 (1945) See also *In re Leshin*, 227 F.2d 197, 125 USPQ 416 (CCPA 1960) (selection of a known plastic to make a container of a type made of plastics prior to the invention was held to be obvious)) (MPEP 2144.07)

18. The obvious production of a bag as disclosed by Wurr utilizing threads made from the polyolefin comprising PBPC as disclosed by Higuchi according to the invention of Wurr (i.e. cross section shape, multi or monofilament) would have produced the same invention as claimed in claims 1-22.

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19. Regarding claims 1, 3-6, and 12-22: While Higuchi is silent regarding conductive channels being formed in the polyolefin matrix, since Higuchi discloses a polymeric material with the same composition as disclosed by applicant, it naturally flows that such a polymer would form conductive channels as claimed in claim 1 when extruded as a fiber. Likewise, it also naturally flows that a bag with the configuration disclosed by Wurr comprising fibers of the composition of Higuchi would naturally exhibit corona discharge. Wurr specifically recites that the fabric comprising the bag disclosed may be coated with a thermoplastic coating having permanent antistatic properties. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have produced such a coating from the composition disclosed by Higuchi since the composition of Higuchi has permanent antistatic properties. The disposition of this coating on the inside of the bag in order to provide it with greater antistatic properties. Such a coating is interpreted by the examiner to read on the limitations of a membrane, coating and liner recited in claims 7-11. Therefore, the bag produced by combining the teachings of Wurr and Higuchi would have been the same as that claimed in claims 1 and 3-22.

20. Regarding claim 2: Higuchi recites that the PBPC antistatic agent is generally included in an amount of from 0.5% to 40% by total weight of the composition. In the case where the claimed ranges "overlap or lie inside ranges disclosed by the prior art" a prima facie case of obviousness exists. *In re Wertheim*, 541 F.2d 257, 191 USPQ 90 (CCPA 1976); *In re Woodruff*, 919 F.2d 1575, 16 USPQ2d 1934 (Fed. Cir. 1990)

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MICHELE JACOBSON whose telephone number is (571)272-8905. The examiner can normally be reached on Monday-Thursday 8:30 AM-7 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on (571)272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Michele L. Jacobson
Examiner /M. J./
Art Unit 1794

/Rena L. Dye/
Supervisory Patent Examiner, Art Unit 1794